



Federal Communications Commission
Washington, D.C. 20554

DA 12-1137
July 16, 2012

Michael J. Pearson
222 Hickory Hollow Road
Marshall, AR 72650

Jenna Metznik
Director, Regulatory Compliance
American Tower Corporation
10 Presidential Way
Woburn, MA 01801

Re: Emergency Petition to Compel Compliance
American Towers, LLC
Antenna Structure Registration No. 1281719

Dear Mr. Pearson and Ms. Metznik:

By this letter, the Spectrum and Competition Policy Division (Division) of the Wireless Telecommunications Bureau (Bureau) finds that American Towers, LLC (American Towers, or applicant), a subsidiary of American Tower Corporation, has complied with its environmental obligations under the Commission's rules with respect to the above-identified tower. The proposed tower does not fall within a category that routinely requires the preparation of an environmental assessment under section 1.1307(a) or (b) of the Commission rules. We further find that no basis has been established to require American Towers to file an environmental assessment under section 1.1307(c) of the Commission's rules. American Towers therefore may resume construction of this tower.

Background

On April 12, 2012, we received an "Emergency petition to compel compliance" (Petition) from Mr. Michael J. Pearson. The Petition raises several issues concerning Antenna Structure Registration (ASR) No. 1281719, a 314-foot tower registered to American Towers in Marshall, Arkansas. Upon request from the Division, applicant suspended its construction of the tower pending the outcome of this review. On April 23, 2012, American Towers provided to the Commission the environmental materials that it had prepared prior to filing its registration application. On May 15, 2012, Mr. Pearson filed a reply. Below, we address each of the issues that Mr. Pearson has raised in his Petition.

Discussion

Defective Notice. Mr. Pearson charges that American Towers began construction of the tower without providing notice to the public. Mr. Pearson further complains that the ASR application indicates that the tower would be constructed at 144 Cottonwood Lane, whereas the actual site is on Hickory Hollow Road. He also states that the contractors are using unmarked trucks and that the site is unmarked. Applicant has submitted evidence showing that it provided notice in the *Marshall Mountain Wave* on January 12, 19, and 26, 2012, that the tower would be located at 144 Cottonwood Lane, near Marshall, Arkansas. See *Marshall Mountain Wave* Proof of Publication (Jan. 26, 2012).

Given that the rules from the Commission's December 2011 *Order on Remand* (26 FCC Rcd 16700) were not in effect at the time the tower was registered, Applicant was required to provide notice under the Commission's rules only for National Historic Preservation Act Section 106 review under the Nationwide Programmatic Agreement. See Appendix C to Part 1 of the Commission's rules, Section V.B. Applicant's notice in the *Marshall Mountain Wave* met this obligation. Moreover, a map of the area indicates that the tower site is located approximately where Hickory Hollow Road and Cottonwood Lane intersect. Further, Applicant is not obligated to mark either its construction trucks or the site. We therefore deny this part of the Petition.

Environmental Effects. Mr. Pearson alleges that this tower would have significant environmental effects on migratory birds and endangered species. In support of this allegation, Mr. Pearson states: "The new antenna structure is a very short distance in woods and pasture land 4000+ feet from Loafer's Glory Wildlife Management Area and the connecting extensive Buffalo National River Park land making it abundant with birds and other wildlife including many Endangered Species. (250 species of birds, many endangered species, mountain lions, bobcats, black bear, skunks, whitetail deer, beaver, otter, and other species too numerous to mention)."

We find that this assertion does not meet the standard for requesting environmental review under section 1.1307(c) of our rules, which states, "If an interested person alleges that a particular action, otherwise categorically excluded, will have a significant environmental effect, the person shall submit to the Bureau responsible for processing that action a written petition setting forth *in detail* the reasons justifying or circumstances necessitating environmental consideration in the decision-making process" (emphasis added).

Mr. Pearson does not identify any endangered species that may be affected by the tower. Instead, he provides a lengthy list of non-endangered species in the area. Further, Mr. Pearson does not provide any basis for why migratory birds may be significantly affected by this particular tower. The proximity to a Wildlife Management Area and relative proximity to the Buffalo National River Park do not, in and of themselves, establish that the tower may have a significant effect on the environment. The Wildlife Management Area is known to contain many of the species Mr. Pearson identifies, but they are not endangered. The proposed site is not located in the Buffalo National River Park, but it is roughly three miles away at its closest point. In addition, contrary to Mr. Pearson's assertion in his May 15, 2012 e-mail, an applicant is not required to identify these nearby features in its environmental analysis. We therefore deny this portion of the Petition.

We also find that based on applicant's pre-application environmental review, which was conducted by Environmental Corporation of America (ECA), an Environmental Assessment would be unnecessary even if Mr. Pearson's allegations had the requisite specificity to state a claim under section 1.1307(c). With respect to endangered species, ECA examined the site for endangered species that are found in Searcy County, and determined that only one species, Royal Catchfly, a state-threatened species, might be present. See Letter from David McGlothlin, Project Manager, and Ben Salter, Senior Reviewer, ECA, to Elyssa Bailey, American Tower (Jan. 26, 2012) (McGlothlin Letter). ECA saw no evidence of this species during its site review, and the relevant Arkansas agencies, the Arkansas Game and Fish Commission and the Arkansas National Heritage Program, did not have any concern that this species would be affected. McGlothlin Letter at 2-3, Table 1. In the absence of specific assertions to the contrary, we find this evaluation sufficient to establish that no EA is necessary for potential effects on endangered species.

With respect to migratory birds, ECA acknowledged the tower would be situated in a migratory flyway, McGlothlin Letter at 3, and would be lit with red-steady lights. However, the tower would be under 450 feet tall and would not use guy wires. According to the Bureau's recently adopted Final Programmatic Environmental Assessment for the Antenna Structure Program, <http://www.fcc.gov/pea> (PEA), "towers with guy wires result in higher levels of avian mortality than towers without guy wires." PEA at 7-1. Further, existing studies have not shown significant avian mortality at towers less than 450 feet tall, even for towers with guy wires. PEA at 5-12 to 5-14.

In addition, ECA determined that the tower site is not in or on a "wetland, waterway, wildlife refuge, national wilderness area, native grassland or forest area, ridge-line, mountain top, coastline or area commonly known to have high incidences of fog or low clouds, where migratory birds may be found." McGlothlin Letter at 3. The PEA identified many of these types of locations as sensitive areas, where a tower is more likely to have a significant effect on migratory birds. PEA at 4-18 to 4-20. Indeed, ECA has satisfactorily addressed all of the areas identified as sensitive in the PEA that could be present at this location.

Based on the record before us, we therefore find that even if Mr. Pearson had met the standard to request an Environmental Assessment under section 1.1307(c), American Tower adequately addressed Mr. Pearson's concerns in its pre-construction environmental review.

Radio frequency (RF) Emissions. Mr. Pearson indicates that he lives 800 feet from the tower site at an elevation of 1250 feet. While he does not mention RF emissions in his letter to the Commission, he does express concerns about the effects of exposure in his attached letter that is addressed to American Towers. Under the Commission's rules, licensees that provide service from the tower will be required to ensure compliance with the limits for maximum permissible exposure (MPE) established by the FCC. These limits have been developed based on guidelines provided by the Institute of Electrical and Electronics Engineers, Inc. (IEEE) and the National Council on Radiation Protection and Measurements (NCRP). Both the NCRP and IEEE guidelines were developed by scientists and engineers with a great deal of experience and knowledge in the area of RF biological effects and related issues. Given that there are no antennae currently on the site, it is premature to assert that the RF levels at the site will exceed the applicable MPE limits set forth in the Commission's rules. We therefore deny this aspect of the complaint.

We note that to address concerns about RF exposure from a radio transmitter, the FCC has estimated some worst-case horizontal distances that should be maintained from cellular base station antennas to meet the RF exposure guidelines. These distances can be found in Appendix B of "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance" (http://wireless.fcc.gov/siting/FCC_LSGAC_RF_Guide.pdf). There is no reason to believe that this site will not be in compliance with the FCC's RF exposure limits.

Conclusion

For these reasons, the Division DENIES the Petition. The Division further FINDS that applicant AMERICAN TOWERS, LLC has complied with its obligations under the Commission's environmental rules, and that it therefore may resume construction of this tower.

Sincerely,

Aaron Goldschmidt
Assistant Chief, Spectrum and Competition Policy Division
Wireless Telecommunications Bureau